

2016-2017 Main Estimates

TEMPORARY FOREIGN WORKER PROGRAM

PROPOSED RESPONSE:

- The Temporary Foreign Worker Program (TFWP) and International Mobility Program (IMP) allow employers to hire foreign nationals on a temporary basis.
- The TFWP contributes to the competitiveness and viability of Canadian businesses, since workers are recruited by employers or agencies to address labour or skill shortages. The IMP facilitates the entry of foreign workers whose admission will advance Canada's broad economic, social and cultural national interests.
- Partners sought \$264.47M over two years, including \$10.35M (including EBP and PWGSC accommodation costs) for the Canada Border Service Agency (CBSA) in 2015-2016 and 2016-2017.
- Requested funding is for the CBSA's Criminal Investigations Program, to support the criminal investigation of TFWP and IMP fraud.
- In 2015-2016, the CBSA has received authorities to increase its reference levels by an additional \$8.75M over two fiscal years starting in 2015-2016, with 25% being frozen in year two. All corporate costs, totalling \$0.74M over 2 years will be absorbed by the Agency.
- In 2015-2016, the CBSA received \$2.16M as follows:
\$1.89M under Vote 1 - Operating Expenditures: \$0.81M in Salary and \$1.08M in O&M **\$0.27M** under Vote 5 - Capital Expenditures
- In 2016-2017, the CBSA will receive \$6.6M as follows:
 \$6.5M under Vote 1 - Operating Expenditures: \$4.0M in Salary and \$2.5M in O&M
 \$0.1M under Vote 5 - Capital Expenditures

Backgrounder:

The CBSA is mandated to investigate and pursue the criminal prosecution of persons who commit offences under Canada's border legislation, which includes the *immigration and Refugee Protection Act (IRPA)* and *Customs Act* and *Export and Permits Act*.

Criminal Investigators focus on complex cases of fraud involving organized fraudulent activities or a history of non-compliance, aimed primarily on the organizers, facilitators and perpetrators of fraud who pose a threat to the integrity of Canada's border legislation (i.e. employers or consultants that are wilfully contravening the provisions of the IRPA). Complex cases of fraud are those that go beyond a single incident, often requiring follow-up investigation or use of specialized investigative techniques (i.e. search warrants) to gather evidence to support the offence or previous offence(s).

CBSA criminal investigators investigate cases of suspected employment fraud under the IRPA, which may include fraud committed by employers who have hired workers under the TFWP that require Labour Market Impact Assessment (LMIA) and also for LMIA-exempt jobs.

- CBSA investigates offences related to employment fraud under
- S.124(1)(c): Employing a foreign national in a capacity in which the foreign national is not authorized under IRPA. Examples:
 - worker applies to work in Canada in a certain capacity, but the employer has them working in a completely different capacity.
 - worker ends up being employed by a different employer for which the FN is not authorized to work for.
 - permit was approved through the program and the foreign national continued to work for the same employer after the permit expired or where a permit was revoked or cancelled.
 - S.127(a): Misrepresentation or withholding material facts relating to a relevant matter that induces or could induce an error in the administration of the IRPA; and/or
 - S.127(b): Communication of false or misleading information or declaration with intent to induce or deter immigration to Canada.
 - Examples: employer has provided misleading information in order to induce an error in the administration of the Act, ie. if the decision to authorize the work permit was based on false information regarding the job they were intending to be employed at.

Employers who employ "a foreign national in a capacity in which the foreign national is not authorized to be employed (s. 124)" can be fined up to \$50,000 and imprisoned for up to two years or both.

Employers who intentionally misrepresent or withhold information or provide false information to contravene the IRPA (i.e. lie on their Labour Market Impact Assessment application about their efforts to hire Canadians) can be fined up to \$100,000 and imprisoned for up to five years or both.

In most cases, illegal foreign workers would be referred to IRCC (revocation of permit) and CBSA Inland Enforcement (removal). Workers are not the focus of CBSA criminal investigations (unless there are aggravating circumstances warranting a more severe deterrent than regulatory measures).

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